

CHAPTER NO. 951

HOUSE BILL NO. 3367

By Representative Coleman

Substituted for: Senate Bill No. 3586

By Senator Person

AN ACT to amend Tennessee Code Annotated, Title 35, Chapter 5, Part 1, relative to judicial or trust sales.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-5-114, is amended by designating the existing language as subsection (a), and adding the following language as new, appropriately designated subsections thereto:

(b)

(1) The beneficiary may, unless the deed of trust contains specific language to the contrary, appoint a successor trustee at any time by filing a substitution of trustee for record with the register of deeds of the county in which the property is situated.

(2) The substitute trustee or its delegate shall succeed to all the power, duties, authority, and title of the original trustee and any previous successor trustee or delegatee.

(3) In the event the substitution of trustee is not recorded prior to the first date of publication by the substitute trustee, the beneficiary shall include in the substitution of trustee instrument, which shall be recorded prior to the deed evidencing sale, the following statement: "Beneficiary has appointed the substitute trustee prior to the first notice of publication as required by T.C.A. §35-5-101 and ratifies and confirms all actions taken by the substitute trustee subsequent to said date of substitution and prior to the recording of this substitution.".

Once a substitution of trustee instrument containing the statement set forth in this subdivision (3) is timely recorded, it shall act as conclusive proof as a matter of law that the substitute trustee has been timely appointed and has acted with authority of the beneficiary.

(c) A substitution of trustee shall be recorded prior to any sale pursuant thereto and no action may be instituted against any person who, acting in good faith without knowledge to the contrary, relies upon the validity of said substitution of trustee or written statements by the

beneficiary or substitute trustee as to the authority of the substitute trustee.

(d) If the name of the substitute trustee is not included in the first publication, then, not less than ten (10) business days prior to the sale date, the substitute trustee shall send notice by registered or certified mail to the debtor or any co-debtor as provided in §35-5-101 and to any interested parties giving the name and address of the substitute trustee. If such trustee is not a resident of the state of Tennessee, the notice shall include the name and address of a registered agent of the substitute trustee who is located in the state of Tennessee. Record notice of the mailing provided in the paragraph shall be evidenced by the substitute trustee's recordation of an affidavit recorded prior to the deed evidencing such sale or by recitation on the substitute trustee's deed.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.

PASSED: May 25, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 20th day of June 2006


PHIL BREDESEN, GOVERNOR